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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	<b>No. CR 17-0387 CRB</b>
	)	
AMER SINAN ALHAGGAGI,	)	
	)	
Defendant.	)	
	)	San Francisco, California
		Wednesday, July 18, 2018

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff: BRIAN J. STRETCH  
United States Attorney  
450 Golden Gate Avenue  
San Francisco, California 94102  
**BY: S. WAQAR HASIB, AUSA**

For Defendant: SWANSON & McNAMARA  
300 Montgomery Street, Suite 1100  
San Francisco, California 94104  
**BY: MARY McNAMARA, ESQ.**  
**AUGUST GUGELMANN, ESQ.**

Reported By: Katherine Powell Sullivan, CSR No. 5812, RMR, CRR  
Official Reporter

1        Wednesday - July 18, 2018

2 :16 p.m.

2            P R O C E E D I N G S

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4        **THE CLERK:** Calling criminal action CR 17-0387, USA  
5        versus Amer Sinan Alhaggagi.6        **MR. HASIB:** Good afternoon, Your Honor. Waqar Hasib  
7        for the United States.8        **MS. McNAMARA:** And Good afternoon, Your Honor. Mary  
9        McNamara and August Gugelmann for Mr. Alhaggagi, who is present  
10       before the Court, in custody.11       **THE COURT:** Good afternoon.12       So my understanding is that the defendant wishes to change  
13       his plea?14       **MS. McNAMARA:** That's correct, Your Honor.15       **THE COURT:** I have received an application for  
16       permission to enter a plea of guilty. I am prepared to  
17       proceed.18       **MS. McNAMARA:** Thank you, Your Honor.19       **THE COURT:** Would you administer the oath to the  
20       defendant.21       **THE CLERK:** Please raise your right hand.

22       (Defendant sworn.)

23       **THE CLERK:** Thank you.24       **MS. McNAMARA:** Your Honor, may I say a word about the  
25       nature of what we're about to do today?

1                   **THE COURT:** Certainly.

2                   **MS. McNAMARA:** Thank you.

3                   As the Court will see, we have a packed audience. And I  
4 would just like to acknowledge the presence here of  
5 Mr. Alhaggagi's entire family, his mother, his father, his  
6 sisters, his brother and a very significant portion of the  
7 Yemeni community. I think some of them are still standing  
8 outside.

9                   This is an unusual proceeding insofar as Mr. Alhaggagi has  
10 not accepted a plea bargain, a written plea bargain from the  
11 government but, rather, is going to plead entirely open and  
12 accept full responsibility for his conduct and all of the  
13 charges in the indictment. The most serious, of course, by  
14 far, being the attempt to provide material support to a foreign  
15 terrorist organization, namely ISIS.

16                  There are three credit-card-related charges which are  
17 minor in the scheme of things that follow. It's  
18 Mr. Alhaggagi's intention to plead open to all.

19                  We have provided to the Court, as the Court has seen, an  
20 application for permission to enter a guilty plea. Contained  
21 in this document is a two-and-a-half-page -- I'm sorry,  
22 three-and-a-half-page factual elocution which concentrates  
23 mainly on the attempt to provide material support charge and  
24 lays out in significant detail, given that this is an open  
25 plea, what Mr. Alhaggagi has done, and the full context of it.

1       So Mr. Alhaggagi has now signed that application in open  
2 court. I have signed it. And after the Court goes through its  
3 colloquy with Mr. Alhaggagi, we will make some requests here,  
4 which I think the Court -- the government, I should say, has  
5 agreed to in terms of suggestion to the Court for how to handle  
6 this unusual case at sentencing.

7       **THE COURT:** Okay. Fine. Would you administer the  
8 oath to Mr. Alhaggagi?

9       **THE CLERK:** We did, Judge.

10       **THE COURT:** We did already?

11       **THE CLERK:** Yes.

12       **THE COURT:** So I have some questions to ask you, sir,  
13 in connection with your plea. And it's required that you  
14 answer the questions truthfully. Do you understand that?

15       **THE DEFENDANT:** Yes, Your Honor.

16       **THE COURT:** What is your full name?

17       **THE DEFENDANT:** Amer Sinan Alhaggagi.

18       **THE COURT:** When were you born?

19       **THE DEFENDANT:** July 6, 1995.

20       **THE COURT:** How old are you, sir?

21       **THE DEFENDANT:** 23 years old.

22       **THE COURT:** How far did you go in school?

23       **THE DEFENDANT:** High school and some college.

24       **THE COURT:** Have you been treated recently for any  
25 mental illness or addiction to narcotic drugs of any kind?

1                   **THE DEFENDANT:** No, Your Honor.

2                   **THE COURT:** Are you currently under the influence of  
3 any drug, medication, or alcoholic beverage of any kind?

4                   **THE DEFENDANT:** No, Your Honor.

5                   **THE COURT:** Have you received a copy of the charges  
6 pending against you?

7                   **THE DEFENDANT:** Yes.

8                   **THE COURT:** Have you had an opportunity to discuss  
9 those charges and your case with your attorney?

10                  **THE DEFENDANT:** Yes.

11                  **THE COURT:** Are you fully satisfied with the  
12 representation given to you in this case by your attorney?

13                  **THE DEFENDANT:** Yes, Your Honor.

14                  **THE COURT:** There is no plea agreement in this case;  
15 is that correct?

16                  **THE DEFENDANT:** Correct.

17                  **MR. HASIB:** That's correct, Your Honor.

18                  **THE COURT:** Okay. Do you understand that the Court is  
19 not required to follow any recommendation by the government?

20                  **THE DEFENDANT:** Yes.

21                  **THE COURT:** Or your attorney?

22                  **THE DEFENDANT:** Yes.

23                  **THE COURT:** And the Court is not required to permit  
24 you to withdraw your guilty plea, and may impose a sentence  
25 more severe than you anticipate. Do you understand that?

1                   **THE DEFENDANT:** Yes.

2                   **THE COURT:** Has anyone attempted in any way to force  
3 you to plead guilty or otherwise threatened you?

4                   **THE DEFENDANT:** No.

5                   **THE COURT:** Has anyone made any promises or assurances  
6 of any kind to get you to plead guilty?

7                   **THE DEFENDANT:** No.

8                   **THE COURT:** Are you pleading guilty of your own free  
9 will because you are guilty?

10                  **THE DEFENDANT:** Yes, Your Honor.

11                  **THE COURT:** Are you a citizen of the United States?

12                  **THE DEFENDANT:** I am.

13                  **THE COURT:** What are the possible statutory penalties  
14 for these offenses?

15                  **MR. HASIB:** Your Honor, there are four counts in the  
16 indictment. My understanding is that Mr. Alhaggagi is going to  
17 plead guilty to all four of them. They are as follows:

18                  Count One alleges attempting to provide material support  
19 or resources to a designated foreign terrorist organization in  
20 violation of 18 U.S.C. Section 2339B. The possible  
21 consequences for that offense are up to 20 years in prison;  
22 lifetime on supervised release; a \$250,000 fine; a \$100 special  
23 assessment and forfeiture.

24                  Count Two alleges possession of device-making equipment in  
25 violation of 18 United States Code Section 1029(a) (4). The

1 maximum penalties for that offense are as follows: Period of  
2 up to 15 years in prison; a period of up to three years on  
3 supervised release; a \$250,000 fine; a \$100 special assessment;  
4 and forfeiture.

5 Count Three alleges using an unauthorized access device or  
6 credit card in violation of 18 United States Code Section  
7 1029(a)(2). The penalties for that are up to ten years in  
8 prison; up to three years on supervised release; a \$250,000  
9 fine, and a mandatory \$100 special assessment.

10 And, finally, Count Four alleges aggravated identity theft  
11 in violation of 18 United States Code Section 1028A. The  
12 maximum penalties for that are a mandatory two years in prison  
13 on top of whatever else Mr. Alhaggagi may serve; a three-year  
14 period of supervised release; a \$250,000 fine; a mandatory \$100  
15 special assessment.

16 The last thing I will mention, with respect to the  
17 penalties, is that because Mr. Alhaggagi is pleading open,  
18 there is the possibility, at least, that these sentences could  
19 all be served consecutively.

20 **THE COURT:** And with respect to the aggravated  
21 identity theft, actually, the law requires that it be served  
22 consecutively?

23 **MR. HASIB:** That's correct, Your Honor.

24 **THE COURT:** Okay.

25 Do you understand all those penalties, sir?

1                   **THE DEFENDANT:** Yes, Your Honor.

2                   **THE COURT:** Okay. Do you understand you have the  
3 right to plead not guilty to any offense charged against you;  
4 to persist in that plea you would then have the right to a  
5 trial by jury; at trial you would be presumed to be innocent  
6 the government would have to prove your guilt beyond a  
7 reasonable doubt; you would have the right to assistance of  
8 counsel for your defense, appointed by the Court if necessary  
9 at trial and every other stage of the proceedings; the right  
10 see and hear all the witnesses and have them cross-examined in  
11 your defense; the right on your own part to decline to testify  
12 unless you voluntarily elected to do so in your own defense;  
13 and the right to compel the attendance of witnesses in your  
14 defense?

15                   **THE DEFENDANT:** Yes.

16                   **THE COURT:** Do you understand that should you decide  
17 not to testify or put on any evidence these facts cannot be  
18 used against you?

19                   **THE DEFENDANT:** Yes.

20                   **THE COURT:** Do you further understand that by entering  
21 a plea of guilty, if the plea is accepted by the Court, there  
22 will be no trial and you will have given up your right to a  
23 trial as well as the other rights associated with the trial as  
24 I've just described them?

25                   **THE DEFENDANT:** Yes, Your Honor.

1                   **THE COURT:** What are the essential elements of the  
2 offenses?

3                   **MR. HASIB:** Your Honor, Count One, the material  
4 support charge, as I mentioned, alleges attempts to provide  
5 material support.

6                   The elements of attempt are that the defendant intended to  
7 commit the crime of providing material support or resources to  
8 a foreign terrorist organization; and that, two, he did  
9 something that was a substantial step toward committing that  
10 crime.

11                  And the elements of the underlying offense of material  
12 support are as follows:

13                  Number one, the defendant provided material support or  
14 resources to a foreign terrorist organization; the defendant  
15 acted knowingly; the defendant knew that the terrorist  
16 organization, in this case the Islamic State of Iraq and  
17 Levant, or ISIL, also known as ISIS, the defendant knew that  
18 that was a designated foreign terrorist organization or that it  
19 had engaged in or was engaging in terrorist activity or  
20 terrorism.

21                  And, lastly, the government would have to prove that at  
22 least one jurisdictional requirement is met among those, or  
23 whether the defendant is a U.S. national, whether the offense  
24 occurred in whole or in part in the United States, and whether  
25 the offense occurred in or affected interstate or foreign

1 commerce. That's Count One.

2 As to Counts Two, Three, and Four, the elements are as  
3 follows:

4 For Count Two possession of device-making equipment, there  
5 are three elements. Number one, the defendant knowingly  
6 produced, trafficked in, had custody or control of, or  
7 possessed device-making equipment. Number two, the defendant  
8 acted with intent to defraud. And, number three, the  
9 defendant's conduct in some way affected interstate commerce or  
10 foreign commerce.

11 Count Three alleges use of an unauthorized access device.  
12 The elements of that offense are as follows:

13 Number one, that the defendant knowingly used or  
14 trafficked in unauthorized access devices during a one-year  
15 period. By using or trafficking those unauthorized access  
16 devices during that period the defendant obtained things of  
17 value worth more than \$1,000. Number three, the defendant  
18 acted with the intent to defraud. And, number four, the  
19 defendant's conduct affected interstate commerce.

20 Lastly, for Count Four, the aggravated identity theft  
21 charge, the elements are as follows:

22 Number one, the defendant knowingly transferred,  
23 possessed, or used without legal authority a means of  
24 identification. Number two, the defendant knew that the means  
25 of identification belonged to a real person. Number three, the

1 defendant did so during and in relation to the crime of using  
2 the counterfeit access device alleged in count three.

3                   **THE COURT:** All right. Now, you've heard the  
4 government recite the essential elements of each of the four  
5 counts. Do you believe if the case went to trial the  
6 government would have evidence which would prove beyond a  
7 reasonable doubt each element of each offense?

8                   **THE DEFENDANT:** Yes, Your Honor.

9                   **THE COURT:** Now, turn, if you will, sir, to your  
10 application for permission to enter a plea. And you see  
11 attached to it is a document called Factual Basis. Do you see  
12 that?

13                   **THE DEFENDANT:** Yes.

14                   **THE COURT:** And starting with the first page of it,  
15 which on line 2 says "Count One, Attempted Material Support."  
16 And it goes all the way through page 1, it goes through page 2,  
17 and it goes to line 14 of page 3. Do you see where I'm looking  
18 at?

19                   **THE DEFENDANT:** Yes.

20                   **THE COURT:** Did you look at and read and understand  
21 what is said with respect to Count One?

22                   **THE DEFENDANT:** I have.

23                   **THE COURT:** Attempted material support.

24                   **THE DEFENDANT:** Yes, Your Honor.

25                   **THE COURT:** Did you read it carefully?

1                   **THE DEFENDANT:** Yes, sir.

2                   **THE COURT:** Is everything stated in that paragraph on  
3 that -- on that count true and correct?

4                   **THE DEFENDANT:** Everything was true.

5                   **THE COURT:** Looking at Count Two, which starts on page  
6 3, line 15, and goes through line 19, possession of  
7 device-making equipment, did you read that paragraph carefully?

8                   **THE DEFENDANT:** Yes, Your Honor.

9                   **THE COURT:** Is everything stated there true and  
10 correct?

11                  **THE DEFENDANT:** Everything is true and correct.

12                  **THE COURT:** In Count Three, which starts again on page  
13 3, line 20 and goes through line 25, did you read that  
14 carefully?

15                  **THE DEFENDANT:** I have.

16                  **THE COURT:** And was everything stated there true and  
17 correct?

18                  **THE DEFENDANT:** It's true and correct.

19                  **THE COURT:** And Count Four, which starts on line 26 of  
20 page 3, and it goes through line 7 of page 4, do you see that?

21                  **THE DEFENDANT:** Yes, I do.

22                  **THE COURT:** And did you read that paragraph carefully?

23                  **THE DEFENDANT:** I have.

24                  **THE COURT:** And is everything stated there true and  
25 correct?

1                   **THE DEFENDANT:** It's true and correct.

2                   **THE COURT:** You may take the pleas.

3                   **THE CLERK:** Mr. Amer Sinan Alhaggagi, the government  
4 has filed an indictment charging you in Count One attempting to  
5 provide material support to a terrorist organization in  
6 violation of 18 U.S.C. Section, 2339B(a)(1); Count Two,  
7 possession of device-making equipment, in violation of 18  
8 U.S.C. Section 1029(a)(4); Count Three, using an unauthorized  
9 access device in violation of 18 U.S.C. Section 1029(a)(2); and  
10 Count Four, aggravated identity theft, in violation of 18  
11 U.S.C. section 1028A(a)(1).

12                  How do you plead to these counts, guilty or not guilty?

13                  **THE DEFENDANT:** Plead guilty.

14                  **THE CLERK:** Your Honor, the defendant has entered a  
15 guilty plea.

16                  **THE COURT:** It is the finding of this court that the  
17 defendant is fully competent and capable of entering informed  
18 pleas; that the defendant is aware of the nature of the charges  
19 and the consequences of the pleas; and that the pleas of guilty  
20 are knowing and voluntary pleas supported by an independent  
21 basis in fact containing each of the essential elements of each  
22 offense. The pleas are, therefore, accepted. The defendant is  
23 now judged guilty of those offenses.

24                  Ms. McNamara, what's your thought?

25                  **MS. McNAMARA:** Thank you, Your Honor.

1       We would ask for one full day for sentencing in this case.

2 And let me spell out why.

3       As the Court has heard, the conduct that makes  
4 Mr. Alhaggagi guilty of the material support charge, an attempt  
5 to provide material support, is opening five Twitter accounts,  
6 two Facebook accounts, and some Gmail accounts that were  
7 necessary to authenticate those accounts as real accounts.

8       He did not post any messages in those accounts; although,  
9 we now know through discovery that somebody else did. We know  
10 that that somebody else was a sympathizer, at the least, of  
11 ISIS. But what Mr. Alhaggagi did was simply open the accounts.

12       As the Court understands, sentencing must take into  
13 account the full nature not only of the offense but also of  
14 Mr. Alhaggagi's conduct. And there is conduct in this case  
15 that I think is going to be the subject of some dispute. Not  
16 that he didn't engage in it, but simply what did he mean by it.

17       And by that I mean Mr. Alhaggagi said some pretty  
18 disturbing things online, things that suggested he may engage  
19 in violence. The FBI sent an undercover to attempt a sting  
20 operation on him. Mr. Alhaggagi did not, in fact, engage in  
21 any of the conduct that the FBI suggested. And he's not  
22 charged with any of that.

23       But the question is, what did he mean by all of that? We,  
24 on the defense, wish to call an expert on radicalization and  
25 terrorism who has examined Mr. Alhaggagi and has reviewed the

1 entirety of the discovery in the case, which is voluminous. We  
2 would like to ask him to testify. And we anticipate that that  
3 testimony would take in the neighborhood of half a day.

4 In addition, I would submit to the Court that it's  
5 important that the Court has the full record here of the  
6 evidence. And we'd like to use the other half of that day to  
7 just lay out to the Court everything that Mr. Alhaggagi did  
8 here and have the Court have that in its consideration of what  
9 the sentence ought to be.

10 So that is our request to the Court. I don't think the  
11 government has an objection to it but, of course, Mr. Hasib  
12 will speak for himself.

13 It would, I think, enhance our ability to conduct a full  
14 sentencing hearing to have, also, briefing to the Court before  
15 we reach this point so that the Court will be fully informed  
16 about what it's about to hear.

17 So with all of those considerations, I would suggest that  
18 we have a day at the Court's discretion, if it's inclined to  
19 grant this request, in November, preceded by simultaneous  
20 opening sentencing briefs and then simultaneous reply  
21 sentencing briefs.

22 **THE COURT:** Okay.

23 **MR. HASIB:** I am largely in agreement with everything  
24 Ms. McNamara said. I think it's worthwhile to have a full day  
25 blocked out for sentencing. We may not take that long, but I

1 think it's worth at least having that available so that the  
2 Court can consider, as Ms. McNamara said, the voluminous facts  
3 in this case.

4 I think the issue of the conduct with the undercover agent  
5 is certainly going to be the subject of sentencing, as will the  
6 issue of who was on the other end of the online communications  
7 that Mr. Alhaggagi was having.

8 Ms. McNamara characterizes him as an ISIS sympathizer. We  
9 believe this is actually a real-live member of ISIS that  
10 Mr. Alhaggagi was communicating with. I suspect things of that  
11 nature will be subject of the sentencing hearing. And I think  
12 the Court is entitled to listen to everything that it needs to  
13 in order to reach its sentencing decision.

14 **THE COURT:** Has your expert prepared a report?

15 **MS. McNAMARA:** He has not, Your Honor.

16 **THE COURT:** What is your intention with respect to his  
17 testimony? What I'm concerned about -- I don't know if  
18 "concerned" is the right word, but I want the government to  
19 have a full opportunity to cross-examine.

20 I'm sure you've had a lot of discussions about all of  
21 this, so I don't know that anything comes as a surprise. But I  
22 really want -- I want to make sure that everybody is fully  
23 engaged and fully informed. So how do you propose to advise  
24 the government as to the scope of your expert's -- it's opinion  
25 testimony; right?

1           **MS. McNAMARA:** Yes, it is.

2           **THE COURT:** He's not a percipient witness?

3           **MS. McNAMARA:** He's not.

4           We had been envisioning but I'm completely open to  
5 suggestion on this point.

6           **THE COURT:** Why doesn't he do what you would do in a  
7 normal Rule 26 disclosure --

8           **MS. McNAMARA:** Yes.

9           **THE COURT:** -- and just write down -- the code is very  
10 clear. Just comply with that.

11           **MS. McNAMARA:** Yes.

12           **THE COURT:** Obviously, if the government wants to call  
13 a rebuttal expert they're free to do so. But they may not,  
14 depending on -- on how the event goes.

15           So I just want to make sure that -- and you can agree how  
16 much lead time there would be for you to have the opportunity  
17 to have your expert comply with a disclosure.

18           **MR. HASIB:** I appreciate that, Your Honor. And I  
19 think Ms. McNamara and I can work out a schedule. We have had  
20 a very cordial relationship thus far.

21           **THE COURT:** I will set aside the day.

22           **MS. McNAMARA:** Thank you.

23           **THE COURT:** I just want to make sure that nobody is  
24 sitting here saying, well, I didn't know.

25           **MS. McNAMARA:** Of course, yes.

1                   **MR. HASIB:** I don't anticipate that will happen.

2                   **THE COURT:** Not with Ms. McNamara it wouldn't happen.

3                   **MR. HASIB:** We -- Ms. McNamara has identified the  
4 witness to me. We may yet object to him being called at all  
5 depending on what we see in the discovery, but if that doesn't  
6 happen he's certainly entitled to testify.

7                   **THE COURT:** Let me just give you my philosophy about  
8 sentencing. You put on whatever you want to put on. I can  
9 figure out what's important to the Court's decision; what isn't  
10 important.

11                  I just want to make sure that the government has a full  
12 opportunity to be advised as to what it is. They're not  
13 subscribing to its accuracy, to its merits, to its relevance or  
14 any of those things. Doesn't make any difference.

15                  You know, this is what advocacy is about. But my general  
16 philosophy about sentencing is anything anybody wants to say  
17 that they think might be important. And that goes, by the way,  
18 on both sides. Not only the defense but the government.

19                  So with that, work out a schedule.

20                  **MS. McNAMARA:** We will. Thank you.

21                  **MR. HASIB:** We will, Your Honor.

22                  **THE COURT:** I think we should do it November 20th.

23                  What is that? I could do it either the 19th or the 20th. That  
24 is Thanksgiving week. But that's actually a rather good week  
25 to make sure that --

**MS. McNAMARA:** It is.

**THE COURT:** Because I probably won't have a jury then at that point.

**MS. McNAMARA:** Right. And we're happy to do that.

The only asterisk I'll put here is, we have not actually vetted that day with our expert. We will do so right away. And we'll communicate with the Court --

**THE COURT:** I can do it either the 19th or 20th. Why  
I simply just advise my courtroom deputy as to which  
preferable.

**MS. McNAMARA:** We will. Thank you, Your Honor.

**MR. HASIB:** We will do that.

**THE COURT:** Thank you.

**MR. HASIB:** Thank you.

**MS. McNAMARA:** Thank you.

**THE COURT:** All right.

(At 2:38 p.m. the proceedings were adjourned.)

**CERTIFICATE OF REPORTER**

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Friday, October 19, 2018

Katherine Sullivan

Katherine Powell Sullivan, CSR #5812, RMR, CRR  
U.S. Court Reporter